



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 230315-0075]

RIN 0648-BK54

Atlantic Highly Migratory Species; Prohibiting Retention of Oceanic Whitetip

Sharks in U.S. Atlantic Waters and Hammerhead Sharks in the U.S. Caribbean Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to prohibit the retention and possession of oceanic whitetip sharks (*Carcharhinus longimanus*) in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, and hammerhead sharks (great (*Sphyrna mokarran*), smooth (*S. zygaena*), and scalloped (*S. lewini*) hammerhead sharks) in U.S. waters of the Caribbean Sea. NMFS is proposing this action in response to two Biological Opinions (BiOps) for Atlantic Highly Migratory Species (HMS): one for the pelagic longline (PLL) fishery and one for the non-PLL fisheries. The BiOps strongly encouraged the inclusion of the scalloped hammerhead shark Central and Southwest Atlantic Distinct Population Segment (DPS) and the oceanic whitetip shark on the list of prohibited sharks for recreational and/or commercial HMS fisheries. This proposed rule could impact all HMS permitted fishermen.

DATES: Written comments must be received by *[insert date 60 days after date of publication in the Federal Register]*. NMFS will hold a public hearing via webinar for this proposed rule on April 25, 2023, from 2 p.m. to 4 p.m. For webinar registration information, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2023-0025, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2023-0025” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

NMFS will hold a public hearing via conference call/webinar on this proposed rule. For specific location, date and time, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/action/proposed-rule-retention-prohibition-oceanic-whitetip-sharks-us-atlantic-waters-and> or by contacting Ann Williamson at ann.williamson@noaa.gov or 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Ann Williamson, ann.williamson@noaa.gov, or Karyl Brewster-Geisz, karyl.brewster-geisz@noaa.gov, 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). The 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. ATCA authorizes the Secretary of Commerce to promulgate such regulations as necessary and appropriate to carry out recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

The Atlantic shark fisheries are composed of 42 species of sharks including oceanic whitetip and scalloped hammerhead sharks. In 2014, NMFS published a final rule (79 FR 38213, July 3, 2014) that, among other things, issued a final determination listing the Central and Southwest Atlantic DPS of scalloped hammerhead sharks as threatened under the Endangered Species Act (ESA). This 2014 final rule defined the Central and Southwest Atlantic DPS as bounded to the north by 28° N. lat., to the east by 30° W. long., and to the south by 36° S. lat. This DPS boundary included the U.S. exclusive economic zone off Puerto Rico and the U.S. Virgin Islands. In 2018, NMFS published a final rule (83 FR 4153, January 30, 2018) that determined oceanic whitetip sharks warranted listing as a threatened species under the ESA throughout its range.

In May 2020, NMFS issued two BiOps, the “Biological Opinion on the Operation of the HMS Fisheries excluding Pelagic Longline” and the “Biological Opinion on the Operation of the HMS Pelagic Longline Fishery,” prepared under section 7(a)(2) of the ESA. These BiOps concluded consultation on the HMS PLL and non-PLL fisheries, as managed under the 2006 Consolidated HMS FMP and its amendments.¹ In these BiOps,

¹ In July 2022, NMFS requested reinitiation of consultation on the effects of the HMS PLL fishery due to new information on mortality of giant manta ray that exceeded estimates from the 2020 BiOp. Pending completion of this consultation, the fishery continues to operate consistent with the Reasonable and Prudent Measures and Terms and Conditions specified in the May 2020 BiOp, and NMFS continues to monitor take of giant manta rays in the fishery.

NMFS concluded that operations of the U.S. HMS PLL fishery and non-PLL fisheries were not likely to jeopardize the continued existence of either the scalloped hammerhead shark Central and Southwest Atlantic DPS or oceanic whitetip sharks. Nevertheless, the BiOps included conservation recommendations for oceanic whitetip shark and the scalloped hammerhead shark Central and Southwest Atlantic DPS that strongly encouraged the inclusion of these federally protected species on the HMS list of prohibited shark species for recreational and/or commercial HMS fisheries.

Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (68 FR 74746, December 24, 2003) established regulatory criteria, codified at § 635.34(c), for adding or removing a shark from the prohibited shark species group (Table 1 of Appendix A to 50 CFR Part 635). Relevant to this proposed action, § 635.34(c) provides that NMFS may add species to the prohibited shark species group if the species is determined to meet at least two of the following four criteria:

- 1) Biological information indicates that the stock warrants protection;
- 2) Information indicates that the species is rarely encountered or observed caught in HMS fisheries;
- 3) Information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS; and
- 4) The species is difficult to distinguish from other prohibited species.

Additionally, in November 2010, ICCAT adopted Recommendations 10-07 and 10-08, which prohibits retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip sharks and hammerhead sharks in the family Sphyrnidae (except bonnethead sharks (*S. tiburo*)) taken in the Convention area in association with ICCAT fisheries. These recommendations were adopted by ICCAT to reduce fishing mortality of oceanic whitetip sharks and hammerhead sharks. As a result, NMFS published a final rule to implement

Recommendations 10-07 and 10-08 (76 FR 53652, August 29, 2011). That final rule prohibited the retention, transshipping, landing, storing, or selling of oceanic whitetip sharks and hammerhead sharks (except bonnethead sharks) caught in association with ICCAT fisheries. The rule prohibited the retention of oceanic whitetip sharks and hammerhead sharks by HMS commercially-permitted vessels that had PLL gear on board, and recreational fishermen where tunas, swordfish, and/or billfish were also retained. Specifically, in that rule, recreational fishermen included fishermen fishing with a General category permit when participating in an HMS tournament, or under an HMS Angling or Charter/Headboat permit, where tunas, swordfish, and/or billfish are also retained. Under the current regulations, recreational fishermen would also include fishermen fishing with a Swordfish General Commercial permit when participating in an HMS tournament. Commercial shark bottom longline (BLL), gillnet, or handgear fisheries and shark recreational fisheries when tunas, swordfish, and/or billfish are not retained were not impacted by the 2011 rule because they were not considered ICCAT fisheries (*i.e.*, fisheries that target tunas, swordfish, and/or billfish) and thus could continue to retain oceanic whitetip and hammerhead sharks.

For this proposed rule, NMFS has prepared a draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which present and analyze the anticipated environmental, social, and economic impacts of each alternative considered for this proposed rule. A brief summary of the alternatives considered is provided below. Additional information regarding this action and Atlantic shark management overall can be found in the draft EA/RIR/IRFA, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation Reports, and online at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

Proposed Measures

This proposed rule implements two of the conservation recommendations from the May 2020 BiOps. NMFS is proposing to add oceanic whitetip shark to the prohibited shark species group, remove oceanic whitetip shark from the list of pelagic indicator species, and prohibit the possession and retention of great, smooth, and scalloped hammerhead sharks in the U.S. Caribbean region. As described below, NMFS considered two alternatives concerning oceanic whitetip sharks and five alternatives for the scalloped hammerhead shark Central and Southwest DPS. These alternatives included both no action alternatives and preferred alternatives. The purpose of this proposed action is to reduce the mortality of oceanic whitetip sharks and the Central and Southwest Atlantic DPS of scalloped hammerhead sharks, which are both listed as threatened under the ESA. This effort would promote the conservation and recovery of these threatened species.

Under the preferred alternative for oceanic whitetip sharks (Alternative A2), NMFS would add oceanic whitetip sharks to the prohibited shark species group using the criteria in § 635.34(c). Once added to the prohibited shark species group, the retention, possession, landing, sale, and purchase of oceanic whitetip sharks or parts of oceanic whitetip sharks would be prohibited in all commercial and recreational HMS fisheries in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. As part of this alternative, NMFS would also remove oceanic whitetip sharks from the list of pelagic indicator species (Table 2 to Appendix A to Part 635) because sharks in the prohibited shark species group cannot be possessed or landed and therefore their presence onboard should not be considered an indicator of a pelagic longline vessel. This alternative could reduce the mortality of oceanic whitetip sharks and promote conservation and recovery of this threatened species.

Per the criteria outlined in § 635.34(c), oceanic whitetip sharks currently meet the first, second, and third criteria. Regarding the first criterion, as a result of a status review conducted under the ESA, oceanic whitetip sharks are listed as threatened throughout

their range, which indicates that the stock warrants protection. Regarding the second criterion, few oceanic whitetip sharks are caught in HMS fisheries. From 2017 to 2021, no oceanic whitetip sharks were landed in the commercial sector and interactions between HMS fisheries and oceanic whitetip sharks are low. According to PLL HMS logbook data from the same time period, all individuals were discarded (2,856 were discarded alive and 425 were discarded dead) and there have been no observed interactions between oceanic whitetip sharks and non-PLL fisheries. In the recreational sector, the most recent harvest of oceanic whitetip sharks occurred in 2021 and 2019, with one shark harvested in each year. Thus, the species is not commonly encountered or observed in HMS fisheries compared to target species. Regarding the third criterion, oceanic whitetip sharks are not often seen in non-HMS fisheries, and are therefore not commonly encountered or observed as bycatch. Oceanic whitetip sharks do not meet the fourth criterion as they can be identified relatively easily by their large, rounded, and white-tipped dorsal and pectoral fins.

Under the preferred alternative for hammerhead sharks (Alternative B4), NMFS would prohibit the possession and retention of hammerhead sharks in the large coastal shark (LCS) complex (*i.e.*, great, smooth, and scalloped hammerhead sharks) in all HMS fisheries in the U.S. Caribbean region, as defined at § 622.2. Currently, commercial vessels with gear types other than PLL (*e.g.*, BLL, gillnet, or handgear) can retain all hammerhead sharks. This alternative would prohibit retention and possession of LCS hammerhead sharks for all HMS commercial and recreational permit holders in the U.S. Caribbean region, including in those instances where it was previously authorized (*i.e.*, recreational permit holders with a shark endorsement when tunas, swordfish, and/or billfish are not retained). Due to the difficulty in differentiating between the various species of LCS hammerhead sharks, the preferred alternative applies to all LCS hammerhead sharks so as to mitigate the potential for continued mortality from fishermen

either bringing hammerhead sharks on board to identify the species (increasing the likelihood of post-release mortality) or unintentionally retaining a scalloped hammerhead shark due to misidentification. This alternative could reduce the mortality of hammerhead sharks and promote the conservation and recovery of the scalloped hammerhead shark Central and Southwest Atlantic DPS.

In addition to the proposed measures, in the EA for this action, NMFS analyzed two no action alternatives (Alternatives A1 and B1) that would maintain the status quo for oceanic whitetip sharks and hammerhead sharks. NMFS does not prefer the no action alternatives because they do not meet the objectives of the rule or the conservation recommendations in the 2020 BiOps. The EA for this action also describes the impacts of three other alternatives for hammerhead sharks: prohibiting retention of scalloped hammerhead sharks in U.S. waters of the Caribbean Sea (Alternative B2), prohibiting retention of scalloped hammerhead sharks in all regions (*i.e.*, U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea) (Alternative B3), and prohibiting retention of all LCS hammerhead sharks in all regions (*i.e.*, U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea) (Alternative B5). Alternative B3 also includes an analysis on adding scalloped hammerhead sharks to the prohibited shark species group using the criteria at § 635.34(c). At this time, NMFS does not prefer any alternative that prohibits only the retention of scalloped hammerhead sharks because NMFS recognizes that species identification can be difficult. Not prohibiting retention of smooth and great hammerhead sharks could result in scalloped hammerhead sharks experiencing continued mortality due to misidentification. Further, NMFS does not prefer an alternative that prohibits retention of all LCS hammerhead sharks in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, because it goes well beyond the conservation recommendations put forth by the 2020 BiOps and would unnecessarily limit commercial and recreational fisheries

throughout U.S. waters of the Atlantic Ocean and Gulf of Mexico from accessing LCS hammerhead sharks.

Request for Comments

NMFS is requesting comments on this proposed rule which may be submitted via *www.regulations.gov* or at a public webinar. NMFS solicits comments on this action by [insert date 30 days after date of publication in the *FEDERAL REGISTER*] (see **DATES** and **ADDRESSES**).

During the comment period, NMFS will hold a public hearing via webinar for this proposed action. Information on the webinar will be posted at:

<https://www.fisheries.noaa.gov/action/proposed-rule-retention-prohibition-oceanic-whitetip-sharks-us-atlantic-waters-and>. Requests for sign language interpretation or other auxiliary aids should be directed to Ann Williamson at *ann.williamson@noaa.gov* or 301-427-8503, at least 7 days prior to the meeting.

At the beginning of each webinar, the moderator will explain how the webinar will be conducted and how and when participants can provide comments. The NMFS representative(s) will structure the webinars so that all members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Participants are expected to respect the ground rules, and those that do not may be asked to leave the webinars.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) requires agencies to describe the reasons why the action is being considered. The purpose of this proposed rulemaking is to reduce the mortality of oceanic whitetip sharks and the scalloped hammerhead shark Central and Southwest Atlantic DPS, which are listed as threatened under the ESA, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, the 2020 BiOps, and other applicable law. This effort would promote the conservation and recovery of these threatened species. Implementation of the proposed rule would further the management goals and objectives stated in the 2006 Consolidated HMS FMP and its amendments.

Section 603(b)(2) of the RFA requires agencies to state the objectives of, and legal basis for, the proposed action. The objective of this proposed rulemaking is to add oceanic whitetip sharks to the prohibited shark species group using the criteria in § 635.34(c) and to prohibit the commercial and recreational retention of LCS hammerhead sharks in the U.S. Caribbean region. The legal basis for the proposed rule is the Magnuson-Stevens Act.

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the proposed rule would apply. For RFA compliance purposes, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411). The Small Business Administration (SBA) has established size standards for all other major industry

sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than \$14 million. Therefore, NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector's standard of \$11 million and \$14 million. The 2021 total ex-vessel annual revenue for the shark fishery was approximately \$2.4 million. Since a small business is defined as having annual receipts not in excess of \$11 million, each individual shark fishing entity would fall within the small business definition. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA. As of October 2022, there were 206 Shark Directed permits, 241 Shark Incidental permits, 76 HMS Commercial Caribbean Small Boat permits, 4,175 Charter/Headboat permits (with 2,994 shark endorsements and 1,873 commercial sale endorsements), 23,607 Angling permits (with 12,978 shark endorsements), and 603 Atlantic Tunas General and Swordfish General Commercial permits (with 388 shark endorsements). For more information regarding the distribution of these permits across states and territories please see the HMS Stock Assessment and Fishery Evaluation Report.

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This proposed rule does not contain any new collection of information, reporting, or record-keeping requirements. This proposed rule would add oceanic whitetip sharks on the prohibited shark species group using the criteria in § 635.34(c) to prohibit the commercial and recreational retention of oceanic whitetip sharks for all HMS permit holders in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This proposed rule would also prohibit

the commercial and recreational retention of LCS hammerhead sharks for all HMS permit holders in the U.S. Caribbean region.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, ESA, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any Federal rules.

Under section 603(c) of the RFA, agencies must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Specifically, the RFA (5 U.S.C. 603(c)(1)-(4)) lists four general categories of significant alternatives to assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule, or any part thereof, for small entities.

Regarding the first, second, and fourth categories, all of the businesses impacted by this proposed rule are considered small entities, and thus the requirements are already designed for small entities. Regarding the third category, NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this

rulemaking. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives.

The alternatives considered and analyzed are described below. The IRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Alternative A1, the No Action alternative, would continue to allow commercial permit holders issued a Shark Directed or Incidental limited access permit using other authorized gear (excluding PLL gear) and/or HMS Charter/Headboat permit with a commercial sale endorsement the opportunity to land and sell oceanic whitetip sharks when tuna or tuna-like species are not retained, possessed, on board, or offloaded from, the vessel on the same trip. Vessels fishing recreationally would continue to have the ability to retain oceanic whitetip sharks when tuna or tuna-like species are not possessed on the same recreational trip. This alternative would not be expected to result in any additional economic impacts for HMS permit holders.

Alternative A2, the preferred alternative, would add oceanic whitetip sharks to the prohibited shark species group using the criteria in § 635.34(c) to prohibit the commercial and recreational retention of oceanic whitetip sharks in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This alternative would be consistent with the conservation recommendations from both the 2020 BiOps. From 2017 to 2021, there have been few instances of oceanic whitetip sharks being retained in HMS commercial shark fisheries. This alternative could limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators. However, oceanic whitetip sharks are rarely a target species and are worth less than other more valuable target species. Overall, this alternative would be expected to have very minor adverse socioeconomic impacts on the small entities participating in the fishery.

Under Alternative B1, the No Action alternative, retention of scalloped hammerhead sharks on vessels targeting tunas, swordfish, and/or billfish with PLL gear onboard would continue to be prohibited. Commercial permit holders issued a Shark Directed or Incidental limited access permit and/or HMS Charter/Headboat permit with a commercial sale endorsement using other authorized gear that do not target tuna and tuna-like species (*e.g.*, bottom longline, gillnet, rod and reel, handline, and bandit gear) would still be authorized to fish for, and land scalloped hammerhead sharks subject to existing commercial regulations. This alternative would not be expected to result in any change in economic impacts on the small entities participating in the fishery.

Under Alternative B2, NMFS would prohibit the commercial and recreational retention of scalloped hammerhead sharks for shark commercial and recreational permit holders fishing in U.S. Caribbean region. This alternative would be consistent with the conservation recommendations from both the 2020 BiOps. Between 2017 and 2021, there were no reported landings of scalloped hammerhead sharks in the U.S. Caribbean region and therefore it is unlikely revenue would be lost from prohibiting retention of this species. However, there could be some minor costs associated with discarding or avoiding scalloped hammerhead sharks within that region. This alternative could also limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators. This alternative would be expected to have neutral to minor adverse economic impacts on the small entities participating in the fishery.

Under Alternative B3, NMFS would prohibit the commercial and recreational retention of scalloped hammerhead in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This alternative would be consistent with the conservation recommendations from both the 2020 BiOps. On average, from 2017 to 2021, scalloped hammerhead sharks contributed \$10,753 of revenue in the Atlantic and Gulf of Mexico shark fisheries combined. This equates to less than 0.5 percent of the

total revenue from all shark fisheries. However, there could be some minor costs associated with discarding or avoiding scalloped hammerhead sharks. This alternative could also limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators. Therefore, this alternative would be expected to have minor adverse economic impacts on the small entities participating in the fishery.

Under Alternative B4, the preferred alternative, NMFS would prohibit the commercial and recreational retention of all LCS hammerhead sharks in the U.S. Caribbean region. This alternative would be consistent with the conservation recommendations from both the 2020 BiOps. Between 2017 and 2021, there were no reported landings of hammerhead sharks in the U.S. Caribbean region and therefore it is unlikely revenue would be lost from prohibiting this species. However, there could be some minor costs associated with discarding or avoiding hammerhead sharks within that region and this alternative could limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators targeting hammerhead sharks. NMFS prefers Alternative B4 because it would implement the 2020 BiOps conservation recommendations and provide the most robust protections for scalloped hammerhead sharks while not limiting fishing opportunities for hammerhead sharks in the Atlantic and Gulf of Mexico. This alternative would be expected to have minor adverse economic impacts on the small entities participating in the fishery.

Under Alternative B5, NMFS would prohibit the commercial and recreational retention of all LCS hammerhead sharks in U.S. waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This alternative would be consistent with the conservation recommendations from both the 2020 BiOps. On average, from 2017 to 2021, hammerhead sharks contributed \$42,794 of revenue in the Atlantic Ocean and Gulf of Mexico shark fisheries combined. This equates to less than 2 percent of the total revenue from all shark fisheries. However, there could be some minor costs associated

with discarding or avoiding hammerhead sharks and this alternative could limit fishing opportunities and lead to fewer fishing trips for charter/headboat operators. Therefore, this alternative would be expected to have minor adverse economic impacts on the small entities participating in the fishery.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: March 16, 2023.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.22, revise paragraphs (a)(2) and (c)(2), and add paragraph (c)(9) to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(a) * * *

(2) Vessels issued an Atlantic Tunas General category permit under § 635.4(d) that are participating in an HMS registered tournament, vessels issued an HMS Angling category permit under § 635.4(c), or vessels issued an HMS Charter/Headboat permit under § 635.4(b) may not retain, possess or land scalloped, smooth, or great hammerhead sharks if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel. Such vessels also may not retain, possess or land swordfish, tuna, or billfish if scalloped, smooth, or great hammerhead sharks are retained or possessed on board, or offloaded from, the vessel.

* * * * *

(c) * * *

(2) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e)(2) and (4): Atlantic blacktip, Gulf of Mexico blacktip, bull, great hammerhead, scalloped hammerhead, smooth hammerhead, lemon, nurse, spinner, tiger, blue, common thresher, porbeagle, Atlantic sharpnose, finetooth, Atlantic blacknose, Gulf of Mexico blacknose, and bonnethead.

* * * * *

(9) No person who has been issued or should have been issued a permit under § 635.4 of this part may retain, possess, or land scalloped, smooth, or great hammerhead sharks in or from the Caribbean, as defined at § 622.2 of this chapter.

* * * * *

3. In § 635.24, revise paragraphs (a)(4)(iv) and (a)(9), and add paragraph (a)(11) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(4) * * *

(iv) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell any blacktip, bull, lemon, nurse, spinner, tiger, Atlantic sharpnose, bonnethead, finetooth, and smoothhound shark, subject to the HMS Commercial Caribbean Small Boat permit shark retention limit. A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may not retain, possess, land, or sell any hammerhead, blacknose, silky, sandbar, blue, thresher, shortfin mako, or prohibited shark, including parts or pieces of these sharks. The shark retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range from zero to three sharks per vessel per trip. At the start of each fishing year, the default shark trip limit will apply. During the fishing year, NMFS may adjust the default shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section. The default shark retention limit for the HMS Commercial Caribbean Small Boat permit is three sharks per vessel per trip.

* * * * *

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of silky sharks, and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have pelagic longline gear on board or on vessels issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

* * * * *

(11) No person who has been issued or should have been issued a permit under § 635.4 of this part may retain, possess or land scalloped, smooth, or great hammerhead sharks in or from the Caribbean, as defined at § 622.2 of this chapter.

* * * * *

4. In Table 1 of Appendix A to Part 635, remove the term “Oceanic whitetip, *Carcharhinus longimanus*” under heading C and add the term “Oceanic whitetip, *Carcharhinus longimanus*” under heading D in alphabetical order.

The addition reads as follows:

Appendix A to Part 635 – Species Tables

Table 1 of Appendix A to Part 635 – Oceanic Sharks

* * * * *

D. Prohibited Sharks
* * * * *
Oceanic whitetip, <i>Carcharhinus longimanus</i>
* * * * *

* * * * *

Appendix A to Part 635 [Amended]

5. In Table 2 of Appendix A to Part 635, remove the entry for “Oceanic whitetip shark, *Carcharhinus longimanus*.”